



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
Washington, DC 20224

SMALL BUSINESS / SELF-EMPLOYED DIVISION

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MEMORANDUM FOR DIRECTOR, ADVISORY, INSOLVENCY AND QUALITY

FROM: Laura Hostelley /s/ Laura Hostelley (*for*)
Acting Director, Collection Policy

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Director, Filing and Payment Compliance

SUBJECT: Procedures for Assessing Monetary Sanctions, Penalties and Costs
under Internal Revenue Code Section 6673(b) in Collection Cases

This memorandum provides interim guidance regarding procedures for assessing monetary sanctions, penalties or court costs under Internal Revenue Code (IRC) Section (§) 6673(b) in collection cases. These procedures will be incorporated in Internal Revenue Manual (IRM) 25.3.5, Judgment Follow-up, and IRM 5.4.12, Centralized Case Processing (CCP) General Procedures. Please ensure that this information is distributed to all affected employees within your organization.

Background

Section 6673(b) of the Internal Revenue Code provides that:

- (1) a court may require the taxpayer to pay a penalty not in excess of \$10,000.00 when a taxpayer's position in an IRC § 7433 damages case is frivolous or groundless.
- (2) any monetary sanctions, penalties or costs awarded in a civil tax proceeding by any court (other than the Tax Court) may be assessed and, upon notice and demand, collected in the same manner as a tax.
- (3) any sanctions, penalties, or costs awarded in connection with an appeal from the Tax Court or other court may be assessed and, upon notice and demand, collected in the same manner as a tax.

As an alternative to collecting such sanctions, penalties, or costs pursuant to judgment collection procedures, the Department of Justice (DOJ) may request that the Internal Revenue Service (IRS) assess such amounts pursuant to IRC § 6673(b).

Procedures for Routing IRC § 6673(b) Assessment Requests

Requests for assessments under IRC § 6673(b) will generally come from DOJ. These requests must include a copy of the court order providing for the award of monetary sanctions, penalties or costs to the IRS. All requests should be sent to the Area Counsel attorney assigned to the case for appropriate routing within the IRS. Requests for IRC § 6673(b) assessments will be routed by the Area Counsel attorney as follows:

Type of Case	Send Request to
Collection Due Process cases	Appeals Processing (see IRM 8.22.3.7.2)
Collection Cases (including Trust Fund Recovery Penalty (TFRP) refund cases, IRC §7433 cases, and other types of collection cases discussed in IRM 25.3.2 and IRM 5.17.4, Suits by the United States, and IRM 25.3.3 and IRM 5.17.5, Suits against the United States)	Collection AIQ Advisor assigned to the case
Bankruptcy cases (including appeals from decisions of the bankruptcy court)	Field Insolvency caseworker assigned to case
Examination cases (including appeals from court decisions)	Technical Services, Examination

Requesting IRC § 6673(b) Assessments in Collection Cases

Form 8278, Assessment and Abatement of Miscellaneous Civil Penalties, is used to request assessments under IRC § 6673(b). In collection cases, the advisor assigned to the case will complete the Form 8278 within 10 business days, if possible, after receiving a DOJ request for assessment, a copy of the court order, and any additional information that may be needed to complete the form. If additional information is needed, the advisor will contact the Area Counsel attorney who forwarded the request. While there is no Assessment Statute Expiration Date (ASED) for an assessment made pursuant to IRC § 6673(b), an assessment must be made before administrative collection actions (e.g., filing a Notice of Federal Tax Lien (NFTL) or issuing a levy) can be taken by the IRS to collect this amount. The request for assessment therefore should be handled promptly.

The advisor must complete items 1 through 8 on page 5 of Form 8278, following the instructions for completing the form. For the “Year” in Item 5, use the year of the court’s order. Leave Item 6, the Statute Date, blank, and check the box in Item 4 because there is no

ASED for IRC § 6673(b) assessments. Provide the amount to be assessed on page 5 in the row for Penalty Code Section 6673(b) (currently under “I, Other (IRM 20.1.10)”). It is important that the correct Penalty Code Section and corresponding Penalty Reference Number (PRN) are provided because the PRN dictates the language in the notice provided to the taxpayer that explains the amount being assessed. If the amount to be assessed is different from the amount awarded by the court for monetary sanctions, penalties and costs, explain the discrepancy in the “Remarks” section on the same page of the form. Prepare one Form 8278 for each assessment to be made under IRC § 6673(b).

The Advisory Group Manager must review and sign the Form 8278 when an IRC § 6673(b) assessment is requested. An electronic digital signature is acceptable. After management review and approval, forward page 5 of Form 8278, along with a copy of the court order, to the Field Office Resource Team (FORT) Manager. Requests may be sent either by fax (215) 516-1124, or if the court order can be scanned and sent electronically, by secured email to Oliver.W.Houston@irs.gov.

Processing IRC § 6673(b) Requests

Upon receipt of the Form 8278 and a copy of the court order, the tax examiner in Centralized Case Processing will review the form to ensure that it is complete, signed by an Advisory Group Manager, and accompanied by a copy of the court order. If the Form 8278 is not complete, or no copy of the court order has been provided, the case should be returned to the originator.

Because assessments made under IRC § 6673(b) do not relate to a tax return, they are considered to be “Non-Return Related Civil Penalties,” and are assessed on the Individual Master File (IMF) and Business Master File (BMF) Master Files of the taxpayer account of record using a unique Civil Penalty (CP) Master File Tax (MFT) Code (MFT 55 for IMF, MFT 13 for BMF). These assessments are input to Master File through Integrated Data Retrieval System (IDRS) using Command Code ADJ54, Transaction Code (TC) 290 with a zero (.00) amount, and the three digit Penalty Reference Number (644) with the penalty amount. Once posted to the Master File, the civil penalty module will reflect TC 240 with the Penalty Reference Number. Notices containing an explanation of the assessment and appeal rights (CP 15 for IMF, CP for BMF) will be generated by Master File based on the Penalty Reference Number input with the penalty assessment.

CCP and Advisory Follow-up

Centralized Case Processing Tax Examiners will notify the originating function upon completion of the requested IDRS input. If the advisor submitting the requested IDRS input does not receive notification from CCP that an assessment has been made within a reasonable time period, the advisor should follow-up on the request to ensure that the assessment posts to the taxpayer’s account. As provided in IRC 6673(b), this assessment may be collected, upon notice and demand, as a tax. The ten-year Collection Statute Expiration Date (CSED) under IRC 6502, plus any applicable extension/suspension, applies with respect to administrative collection actions (e.g., filing a Notice of Federal Tax Lien, issuing a levy) that may be taken to collect the IRC 6673(b) assessment under the IRC. If a

NFTL is filed with respect to the IRC 6673(b) assessment, the date the statutory tax lien arises under IRC 6321 is the date of the IRC 6673(b) assessment, and the NFTL refiling period under IRC 6323(g) is calculated using that date. If other previously assessed tax liabilities were reduced to judgment in the same court proceeding, procedures for extending the CSED for these other assessments should be followed. See IRM 25.3.5.2 (input TC 550, definer code 04, using 20 years from the date the judgment was entered as the new extension date).

Because a judgment was entered in the amount awarded as monetary sanctions, penalties or costs, the procedures of the Federal Debt Collection Procedures Act (FDCPA) will also apply with respect to collecting the amount of the IRC 6673(b) assessment. If collection potential is anticipated beyond the ten-year period under IRC 6502 from the date of the IRC 6673(b) assessment, plus any applicable extension/suspension, contact Area Counsel to determine whether collection actions should be taken under the FDCPA to collect this amount.

If you have any questions concerning these procedures, please feel free to contact me, or a member of your staff may contact Delores Dillmann, Program Analyst. Field employees should raise any concerns through the appropriate management chain.

cc: Frank J. Chan, Program Manager, Philadelphia Compliance Services, Centralized Case Processing Operations
Associate Chief Counsel, Procedure and Administration
SB/SE Division Counsel